



Chapter 1

CONTRACTING OVERVIEW

1.1 Procurement Authority

The requirements for personal service contracting are explained in the following chapters. The legal authority for personal service contracts is contained in chapter 39.29 RCW (see Appendix A). Regulations for implementation are set forth in chapter 15 of the *State Administrative and Accounting Manual*.

1.2 Competitive Procurement – When You Need It, When You Don't

It is always advisable to use the competitive procurement process for personal services. Competitive bidding is a powerful tool for garnering the highest quality professional service from consultants at the most reasonable price. Competition is **required** for personal service contracts of \$5,000 or more, but in keeping with the state's public policy favoring competition, use of limited competition is recommended for contracts less than \$5,000 when feasible. You are well advised to use competitive procurement. Here's why:

Increased Participation – A competitive process provides a greater number of firms an opportunity to submit proposals/offers to the state and encourages qualified firms to participate.

Lower Prices – Full and open competition reduces costs since prospective contractors submit their best offers to obtain contracts.

Higher Quality – Consultants who develop proposals in a competitive environment pull together the strongest management and technical teams available.

Innovation – Issuing solicitations to a number of consultants provides the opportunity to select from the most qualified and skilled talent available in the marketplace. An agency may find a consultant's alternative approach to solving a problem more effective than that initially envisioned by staff.

Favoritism – Unfounded or not, accusations of favoritism can hurt your agency and mar its reputation. Conducting a fair and open competitive process will help avoid any such claims.

Unsavory Publicity – Even the best prepared contracts can go awry. When they do, you are in a more defensible position when you have competitively bid your project.

1.3 Defining Personal Services

Personal services are professional or technical services provided by a consultant to accomplish a specific study, project, task, or other work statement. Consultants, who provide personal services, serve state agencies as objective advisers by rendering professional opinions, judgments, or recommendations. A consultant's services may include offering advice based on specialized knowledge, skills and experience, conducting studies, analyzing and evaluating technical issues, and/or providing advice and training to improve managerial and administrative operations. These services will often assist an agency in setting policy and/or making decisions. Personal services may range from fairly simple projects such as graphic design to complex consulting engagements resulting in development of complex computer systems.

Personal services are generally infrequent functions of a professional or technical nature. The services are performed for state agencies by independent consultants whose occupation is the rendering of services such as: accounting, marketing, finance, engineering, architecture, legal services, auditing, organizational development, management services, medical and health services, strategic planning, research and environmental technology. These examples and more are listed in Section 1.5.

Contracts for personal services may be awarded to individuals, joint ventures, partnerships, corporations, or non-profit organizations. Personal services are generally performed off-site whenever possible at an established place of business.

Consultants may provide an independent, unbiased perspective on a problem. Agency management may find value in the service of a firm or individual who will not be influenced by internal factors and who may have a fresh and new viewpoint to contribute. The agency does not have direct supervisory or managerial control over the day-to-day activities of the consultant providing the service.

Agencies procure personal services from private sources or other public agencies when they do not have the staff or the expertise necessary to perform the service or staff are not available to provide the service. Generally, personal services are used to address a short-term need, resolve a problem, expedite a special project and/or to bring specialized skills for which the state is not permanently staffed. Infrequent and brief use of personal services demonstrates the independent nature of these contracts to the state.

1.4 Negotiated Procurement

Competitive procurement of personal services involves evaluation of proposals based on multiple factors, rather than relying on price as the determinant factor. Agencies determine the weighted value of evaluation criteria and negotiate the contract based on these criteria. This is a different type of procurement process than opening sealed bids at a public bid opening, and selecting the lowest cost, responsive bidder.

Personal services are often more subjective in nature and, therefore, more difficult to specify than services or products procured through a sealed bid process. Intangible properties such as

human effort and impartial advice cannot be bought and sold in the same way as supplies or equipment. Evaluation criteria for personal service procurements may include quality, reputation, experience and technical capabilities among the evaluation criteria. Cost or price is an element in evaluation but the selection need not be driven by price. The solicitation document must clearly set forth the evaluation criteria.

1.5 Other Types of State Procurements

The state's purchasing authority is organized into eight categories, one of which is personal services. The other seven categories are:

1.5.1 Goods and Purchased Services, Chapter 43.19 RCW

Procurement of many state goods and purchased services is the statutory responsibility of the Department of General Administration, Office of State Procurement (OSP) under chapter 43.19 RCW and WAC 236-48 and 236-49. OSP oversees the purchasing and material control practices of all state agencies and serves as the purchasing agent for most agencies. In addition, OSP annually issues a General Authorities document which delegates authority to agencies to make some of their own purchases, according to state procedures (<http://www.ga.wa.gov/proc.htm>). This document sets forth the competitive bid limits and solicitation requirements. Specific authorities may also be delegated separately to agencies for purchases unique to them.

Goods and purchased services are procured through documented telephone or written solicitation of vendors when the dollar value of the service is between \$3,000 and \$39,100. Agencies may conduct their own purchases of \$10,000 or less when the item is not on a mandatory state contract or is not a mandatory item from Central Stores, and when the purchase is not required to be referred to OSP or is not covered by other general or specific authorities granted. Agencies are strongly encouraged to prepare a well written solicitation, such as a Request for Quotations, for purchases within their authority. Experience has repeatedly shown that most vendors respond much more competitively to written solicitations, and the written solicitation affords a greater degree of legal protection to the state while minimizing risk for the purchaser.

Goods and purchased services greater than \$39,100 generally require issuance of an Invitation for Bid (IFB). The IFB identifies a functional performance threshold at which agency needs would be met. Bidders submit offers, which are opened and read aloud at a public bid opening. Contracts are then awarded to the lowest cost responsive and responsible bidder.

In most instances the distinction between a "purchased" service or a "personal" service is clear. However, on occasion the service must be closely evaluated to make the determination. Since the statutory requirements for procurement of purchased services are quite different from those for personal services, it is important to define the service accurately and early in the process. Examples of purchased and personal services are given later in this section and a chart follows to assist in making the distinction. It should also be

noted that if a service is merely incidental to purchase of a good, the procurement is still to be processed as a commodity with the services included.

If a question still arises regarding the appropriate classification, contact either the Office of Financial Management (OFM), Contracts Office, at (360) 725-5260, (360) 725-5259, or (360) 725-5258, or the Department of General Administration, Office of State Procurement, at (360) 902-7192 for clarification.

DISTINCTIONS BETWEEN PERSONAL & PURCHASED SERVICES

Personal Service Characteristics	Purchased Service Characteristics
<ul style="list-style-type: none"> • Services are professional or technical in nature and meet more specialized needs. Work is predominantly intellectual and varied. • Work is independent from the day-to-day control of the agency; consultant maintains control of work methods. • Work requires regular exercise of judgment, discretion, and decision-making; involves providing advice, opinions or recommendations; may have policy-implications for agency; often addresses management-level issues. • May require advanced or specialized knowledge, or expertise gained over an extensive period of time in a specialized field of experience. • Work may be original and creative in character in a recognized field of endeavor, the result of which may depend primarily on the individual's invention, imagination or talent. • Consultant generally assumes risk of loss if the requirements are not satisfied. 	<ul style="list-style-type: none"> • Services are more repetitive, routine or mechanical in nature, following established or standardized procedures as contrasted with customary and regular exercise of discretion or independent judgment. • Services contribute to the day-to-day business operations of the agency, rather than the management or policy side of the agency, and may meet more general needs of the agency. • Services generally involving completion of an assigned task, rather than an entire project. • Decision-making and analysis, if required, is more routine or perfunctory in nature. • Services that are generally performed based upon agency direction
<p>NOTE: <i>The fact that a service possesses one of the above characteristics is not necessarily conclusive to a determination of personal or purchased service, but rather the service should generally fit the applicable criteria.</i></p>	

EXAMPLES OF PERSONAL & PURCHASED SERVICES

The list below is a guide to assist agencies in determining whether a service is generally considered a personal service or a purchased service. Always carefully review the proposed services being required under the contract to make the final determination.

For example, a contract for conference coordination could be either personal or purchased service, depending upon the responsibilities of the contractor. If the contractor is independently responsible for organizing, implementing and coordinating the conference with only minimal guidance from the agency, the contract would be a personal service. If the contractor is following prescribed instructions and the agency has primary responsibility for coordination of the conference, the contract would be designated as a purchased service contract.

Examples of OFM Personal Services	Examples of GA Purchased Services
<p>Accounting services</p> <p>Actuarial services</p> <p>Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc.</p> <p>Appraisal services</p> <p>Art work, original (services creating the art work)</p> <p>Audio/video media productions (design, development and/or oversight of)</p> <p>Auditing services</p> <p>Business analysis and assessment services</p> <p>Business process re-engineering</p> <p>Communications (including design, development or oversight of audio/video productions, brochures, pamphlets, maps, signs, posters, annual reports, etc.)</p> <p>Conference and trade show coordination</p> <p>Consultation on programs, plans, projects, systems, etc.</p> <p>Counseling employees</p> <p>Curriculum development</p> <p>Economic analysis and consultation</p> <p>Environmental Planning/Technology/Studies (except when part of an architectural/engineering project)</p> <p>Evaluation of processes, programs, projects, systems, etc.</p> <p>Executive recruitment</p> <p>Expert witness services for litigation/testimony</p> <p>Facilitation for groups, projects, retreats</p> <p>Facilities planning/coordination</p> <p>Feasibility studies (except when part of an architectural/engineering project)</p> <p>Financial services</p> <p>Fund raising</p> <p>Grant writing</p> <p>Graphic design (creative or original in nature)</p> <p>Guest speakers</p> <p>Investigations (personnel related, etc.)</p> <p>Investment advisors and management</p> <p>Labor negotiations and labor relations services</p> <p>Legal and paralegal services</p> <p>Legislative liaison services</p> <p>Lobbying services</p> <p>Management consulting</p> <p>Marketing services, including identifying market opportunities, conduct of marketing programs, planning, promotion, market research surveys, etc.</p>	<p>Advertising in newspapers, magazines, billboards, etc.</p> <p>Ambulance/emergency medical tech. service</p> <p>Air/bus, vehicle charter/rental service</p> <p>Auctioning service</p> <p>Audiometric testing</p> <p>Banking Services (routine, transaction based)</p> <p>Boiler testing/water treatment service</p> <p>Bookkeeping service (routine, transaction based)</p> <p>Building alarm systems, service and repair</p> <p>Check collection service</p> <p>Clothing, textile fabrication repair service</p> <p>Commercial laundry service, dry cleaning, etc.</p> <p>Communications systems installation, servicing and repair</p> <p>Court reporting and transcription services</p> <p>Credit card service</p> <p>Debt collection service</p> <p>Delivery/courier service</p> <p>Document storage, duplication, retrieval, review and destruction service</p> <p>Drug testing and screening (standard tests)</p> <p>Engraving service</p> <p>Environmental monitoring: noise level, safety, hazardous gas detection, radiation monitoring service, etc. (using standardized processes)</p> <p>Equipment installation, preventive maintenance, inspection, calibration and repair</p> <p>Equipment rental services</p> <p>Exam testing administration and scoring service</p> <p>Firefighting/suppression service</p> <p>Food preparation, vending and catering services</p> <p>Health screening, basic diagnostic (wellness, blood pressure monitoring, blood draw, etc.)</p> <p>Herbicide application service</p> <p>Household goods packing, storage, transportation service</p> <p>HVAC system maintenance service</p> <p>Interpretive services: written/oral/sign language</p> <p>Inventory service</p> <p>Janitorial service, carpet cleaning, window washing</p> <p>Laboratory testing and analysis (standard tests only)</p> <p>Land clearing/debris removal service (when not using heavy equipment)</p> <p>Landscaping--tree planting, grooming service, lawn mowing (except when part of an architectural/engineering project)</p> <p>Language translation service</p> <p>Lay witness (called to testify in a court case)</p>

Examples of OFM Personal Services	Examples of GA Purchased Services
<p>Mediation, negotiation and arbitration services</p> <p>Medical and psychological services, including evaluation and consultative services (For blood draws, physicals, blood pressure checks, etc., see Health Screening under purchased services.)</p> <p>Needs assessment (except when part of an architectural/engineering project)</p> <p>Operational assessments</p> <p>Organization development</p> <p>Outreach services for programs</p> <p>Peer review</p> <p>Planning services (except when part of an architectural/engineering project)</p> <p>Policy development and recommendations</p> <p>Productivity improvement</p> <p>Program development, assessment, implementation, coordination, evaluation, etc.</p> <p>Public involvement services and strategies</p> <p>Public relations services</p> <p>Publication development (See Communications)</p> <p>Quality assurance/quality control services</p> <p>Recommendations on processes, products, projects, systems, etc.</p> <p>Recruitment, executive</p> <p>Research services — social, environmental, technical, etc.</p> <p>Retreat and workshop planning, conduct, coordination, etc.</p> <p>Scientific and related technical services</p> <p>Strategic planning</p> <p>Speech and report writing</p> <p>Statistical analysis</p> <p>Studies, development and conduct</p> <p>Surveys (including development of instrument, conduct and analysis of results — if conduct only of standard survey instrument, would be purchased service)</p> <p>Temporary employment service for professional services: architects, engineers, registered nurses, doctors, etc.</p> <p>Trade development services</p> <p>Training — when it is: (a) offered to specific categories or classes of employees; (b) offered to all or most agency employees six times or less in a fiscal year</p>	<p>Linen rental service</p> <p>Marine equipment inspection, certification and repair</p> <p>Medical equipment rental or repair service (wheel chairs, walkers, etc.) Includes measurements, adjustments and modifications to meet patient needs</p> <p>Metal/pipe/wiring detection service</p> <p>Office furnishings installation, refurbishment and repair service</p> <p>Package inspection and crating</p> <p>Painting service (unless public works)</p> <p>Paper shredding</p> <p>Parking lot sweeping/snow removal service</p> <p>Pest/weed control service</p> <p>Photographic/micrographic processing and delivering, includes aerial and ground photography (if analysis is included, then personal service)</p> <p>Printing/duplicating service</p> <p>Process serving</p> <p>Property management (rent collection, property maintenance, etc.)</p> <p>Recycling/disposal/litter pickup service</p> <p>Security/armored car services</p> <p>Shop welding/metal fabrication service</p> <p>Steam cleaning, high pressure washing, parts cleaning service</p> <p>Studio photography service (does not include portrait painting)</p> <p>Surveying and mapping service (except when part of an architectural/engineering project)</p> <p>Telephone interview service (conduct of survey using prescribed survey instrument)</p> <p>Temporary employment service (clerical support, dictation, word processing, bookkeeping, etc.)</p> <p>Test fishing service</p> <p>Towing service</p> <p>Training — when it is offered on a recurring basis (more than six times per fiscal year) to all or most employees. Also includes existing satellite down-link courses and teleconferencing training services</p> <p>Travel service — air, surface, water</p> <p>Tree topping (when not using heavy equipment)</p> <p>Utility services: garbage, fire protection, heat and sewer, cable TV, power, water, etc.</p> <p>Vehicle inspection, lubricating and repair services</p> <p>Videotaping and recording service</p> <p>Warehouse dry/cold storage rental service</p> <p>Weather information service</p>

1.5.2 Information Processing Equipment and Services, Chapter 43.105 RCW

The Washington State Information Services Board (ISB) has the power and duty to develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data. It also has the power and duty to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services. Agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. See <http://www.wa.gov/dis/portfolio> for the documents referenced in this section. For the latest information regarding competitive acquisition of IT goods and purchased services, see Appendix A of the IT Investment Standards also located at this web site or contact DIS at (360) 902-3566.

The ISB delegated to the Department of Information Services (DIS) certain duties and responsibilities related to the acquisition of IT resources. In addition, RCW 43.105.052 directs DIS to make available information services to state agencies and local governments and public benefit nonprofit corporations on a full cost-recovery basis. Under this authority, DIS may establish IT equipment and services and software master contracts for statewide use. DIS also has statutory responsibility for telecommunications equipment, installation, answering and paging systems, and their corresponding service, and maintenance. These types of purchases are subject to the competitive requirements of chapter 43.105 RCW and to ISB policy.

RCW 43.105.020 defines “purchased services” under the authority of the ISB and DIS to mean services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing. Some IT purchases require ISB or DIS approval. Such approval must be obtained prior to release of any solicitation and prior to conducting the acquisition.

ISB approval is required under one or more of the following circumstances:

- The investment is placed under ISB oversight by legislative proviso.
- The ISB places the investment under its oversight.
- The investment was rated oversight level 3 or is part of a project that was rated oversight level 3, per the oversight matrix in the ISB IT Investment Standards.
- ISB approval may be required if the investment cost exceeds the agency director’s delegated authority.

DIS approval is required under one or more of the following circumstances:

- The investment cost is more than the agency director’s delegated authority.
- The acquisition process to be used is a technology assessment.
- The investment was rated oversight level 2 or is part of a project that was rated oversight level 2, per the oversight matrix in the ISB IT Investment Standards.

- The investment is exempted from delegated authority, even if the investment cost is within the agency director's delegated authority. The ISB Investment Policy lists the types of IT investments that are exempted from delegated authority.

When the acquisition is for IT personal services, in addition to complying with the *Information Technology Investment Policy*, the agency must procure the personal services in accordance with chapter 39.29 RCW and, when the contract is for \$20,000 or more, file the contract with OFM. The ISB policy sets the minimum procedural requirements for protests of all IT purchases. Therefore, IT solicitations for personal services should include the ISB protest language.

Some IT contracts may have elements of both “personal services” as defined in chapter 39.29 RCW and “purchased services” as defined herein. In these situations, the agency should determine the **primary purpose** for the contract. If the contract's primary purpose is determined to be for a personal service, then, in addition to following the ISB rules, the agency must also follow the competitive procurement and filing requirements established by chapter 39.29 RCW and set forth in this booklet. If the primary purpose for the contract is determined to be for a purchased service, then follow the competitive requirements set forth by the ISB in the *Information Technology Investment Policy*.

In general, programming and related technical services are classified as IT “purchased services” when:

1. More established or standardized procedures are being followed or more routine, repetitive or mechanical work is being accomplished.
2. Analysis and decision-making are more general in nature and support of the project, rather than at a level which determines the course or direction of the project.
3. The work does not require rendering significant independent judgment.

When programming services are part of a project that is primarily for design or development of an information system, then the contract is designated as a personal service and procured under chapter 39.29 RCW.

Examples of IT services are listed at the end of this section to assist in determining whether services should be procured under the authority of chapter 43.105 RCW as IT purchased services or pursuant to both authorities, chapter 43.105 RCW and chapter 39.29 RCW as personal services. Again, when referring to the following list of services, remember that the elements of the scope of work of the proposed contract must be examined to determine its appropriate designation. Do not focus exclusively on the title of the service.

Examples of IT Personal Services	Examples of IT Purchased Services
<ul style="list-style-type: none"> Feasibility studies Needs assessment—including consultation with the user as to needs and requirements Development of project definition and scope requirements Business and technology planning Acquisition planning and technology assessment Project management System development and implementation, integration and migration Systems analysis, design, and implementation Quality assurance services Disaster recovery planning System architecture (analysis and design of complex business and technology requirements) Business process re-engineering Performance assessment Technical writing 	<ul style="list-style-type: none"> Routine programming Assisting with network operations and support Technology support including troubleshooting, basic analysis, hardware and software technical support and production services support Security services Language and software conversion Testing system and components Hardware and software installation and maintenance System or equipment maintenance and repair Data entry services Operation of a physical plant Assistance with production turnover IT “commodity-like” services (buying a service that does not include hiring an individual to perform the service), including but not limited to digital certificates, long distance services, toll-free services, research and advisory subscription services, electronic payment services, encryption services and on-line training IT Multimedia services, when supplied by or through DIS, including but not limited to video production, satellite broadcasting, video digitizing, webcasting. Internet programming services and website maintenance Standard IT training related to hardware or software in use by an agency.

1.5.3 Public Works, RCW 28B.10.350, 39.04, 39.80 and 43.19.450

The term, “public works,” includes construction, repair or alteration of buildings or other real property and usually requires professional design and a building permit. RCW 28B.10.50 states that when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of \$25,000, the project is classified as a public works.

The Department of General Administration (GA), Division of Engineering and Architectural Services (E&A) is responsible for design and construction of all state-owned facilities, except those owned by the four-year universities, Department of Transportation and the natural resource agencies.

Engineering and architectural services procured by GA/E&A use a competitive process referred to as consultant selection. For projects estimated to be less than \$100,000 for basic services, a consultant selection committee makes a selection from firms on file. For larger projects, those \$100,000 for basic services or more, an advertisement is published in the

Daily Journal of Commerce. Selection of the architectural and/or engineering firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and to negotiate cost based on the state fee schedule. The architect/engineer begins the project by developing the design and specifications and generally participates on the project through completion of construction.

Construction contracts are also procured through competitive bidding. For contracts under \$100,000, a small works roster may be used. For contracts of \$100,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive, responsible bidder.

Engineering and architectural services fall under the broad definition of personal services; however, they are subject to the competitive and other requirements of chapter 39.80 RCW. Although these services are exempt from competitive procurement and filing requirements of the personal service contract statute, agencies are required per RCW 39.80.070 to submit quarterly reports to OFM on any engineering and architectural agreements and addenda awarded during the quarter.

For more information on these contracts, contact the Department of General Administration, Division of Engineering and Architecture, at (360) 902-7272.

1.5.4 Highway Design and Construction, Chapters 39.80 and 47.28 RCW

Contracts for highway construction are subject to the statutory requirements of chapter 47.28 RCW and for architectural and engineering (A/E) services, chapter 39.80 RCW. Contracts for architectural and engineering services are processed through the Consultant Selection Office in the Department of Transportation, Environmental and Engineering Service Center. Selection of the A/E firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and costs or fees are then negotiated. For additional information on A/E contracts, contact the Consultant Selection Office at (360) 705-7102.

Construction projects are also procured through competitive bidding. All contractors must be pre-qualified prior to bid submission. For contracts of \$100,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive bidder. For information on construction contracts, contact the Pre-Contract Administration Manager at (360) 705-7017.

1.5.5 Printing Services, Chapter 43.78 RCW

The Department of Printing in general, is the mandatory supplier for printing services. They produce a high volume of printed materials for state agencies with about 55 percent of its volume contracted out or bid to private industry. Long-term contracts are maintained for printed forms and envelopes.

For more information you may contact the State Printer at (360) 753-6820.

1.5.6 Insurance and Bonds, RCW 43.19.1935

Purchase of all insurance, bonds and notary public commissions for state agencies is the responsibility of the Office of Financial Management, Risk Management Division. The Division issues a publication entitled, “Contracts: Transferring and Financing Risk,” which assists in determining the amount of insurance required for contractors to carry out state projects. The manual is available on the OFM web page at <http://www.ofm.wa.gov/rmd/risk.htm> or can be ordered in hard copy by calling (360) 902-7301.

The Risk Management Division also conducts risk assessments to help agencies identify exposure areas and advises agencies on ways to reduce or eliminate claims. They also answer specific or general questions on insurance requirements.

1.5.7 Space/Buildings

The purchase, lease or rental of privately owned space and/or buildings on private property and alteration or repair is the responsibility of the Department of General Administration, Real Estate Division. For further information, you may call (360) 902-7373.

1.6 Standards of Ethics and Conduct

State employees contracting on behalf of the state are to maintain strict ethical standards and take caution to avoid any real or apparent conflict of interest situations. Chapter 42.52 RCW, "Ethics in Public Service," effective January 1, 1995, applies to all state employees in all three branches of state government.

The ethics law is designed to protect state employees from conflicts of interest or from engaging in activities where their interests or loyalties could be divided or may be questioned. Employees should familiarize themselves with the applicable statutes and all agency policies whenever they are involved in any purchases on behalf of the state.

Specific ethics prohibitions that can affect employees when contracting are:

- Having a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity in which a state employee has an interest.
- Assisting other persons in transactions with the state when a matter has been within his/her official responsibility within the preceding two years.
- Disclosing confidential information, for personal benefit or gain, or for the benefit or gain of others.
- Accepting employment which might reasonably require the disclosure of confidential information obtained through state employment.
- Using one's official state position to obtain special privileges or exemptions or to grant special privileges to others.

- Accepting outside employment or compensation if circumstances would lead a reasonable person to believe it is a reward for performance or non-performance of state duties.
- Accepting any gift, if circumstances create the impression that one's vote, judgment or action could be affected, or that staff are being rewarded for the performance or nonperformance of an official duty or if the item is of a value that exceeds statutory limits.

Separate ethics boards are established for the legislative and executive branches with authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, conduct hearings, impose penalties, and recommend suspension and dismissal of violators. Agencies should contact their Assistant Attorney General or the appropriate ethics board for further information on the ethics law.

1.7 Contracting with Current or Former State Employees

Specific restrictions apply to contracting with current or former state employees. Agencies should familiarize themselves with the requirements of chapter 42.52 RCW prior to entering into any type of contracts. A brief summary of the restrictions follows and should be used as a guide. This summary is not a comprehensive explanation of all the requirements of the ethics law.

NOTE: These prohibitions apply to any type of service contracting with the state, not just personal service contracting.

Current State Employees

Current state employees may contract with outside entities or with other state agencies when all of the following conditions apply:

1. The contract is bona fide and actually performed.
2. The performance or administration of a contract or grant is not within the course of the officer's or employee's official duties, or under his/her official supervision.
3. The performance of the contract or grant is not prohibited by applicable laws or rules governing outside employment for the state officer or state employee.
4. The contract or grant is not performed for or compensated by any person from whom the officer or employee is prohibited from accepting a gift.
5. The contract or grant is not expressly created or authorized by the officer or employee in his/her official capacity.
6. The contract or grant would not require unauthorized disclosure of confidential information.

Ethics Board Determination

If a current state employee enters into a contract with a state agency and the contract is competitively bid and the only bid received is from the state employee; or, if the contract is not competitively bid, the state employee must receive the prior approval of the appropriate ethics board prior to execution of the contract. If approved, the state employee must file the contract with the board within 30 days of contract approval.

OFM will not process this type of contract filing with a state employee until the approval from the appropriate ethics board has been received.

Former State Employees

One-Year Restriction: A former state employee may not accept employment or compensation from an employer within one year of leaving state employment if for two years prior to leaving the state, the employee negotiated one or more state contracts with the prospective employer; the value of the contract or contracts was more than \$10,000; and, duties for the new employer include implementing or fulfilling contracts negotiated or administered while a state employee.

Two-Year Restriction: A former state employee may not have a beneficial interest in a contract that was expressly authorized or funded by executive action in which the employee participated. (A beneficial interest is the right to enjoy profit, benefit or advantage from a contract.)

Continuing Restriction: A former state employee has a continuing post-state employment restriction prohibiting him or her from assisting others in any transaction with the state if he or she participated in the transaction while a state employee.

1.8 Training on Personal Service Contracts

Senate Bill 5629, passed by the 2002 Legislature, requires those who execute or manage personal service contracts to complete specific contract training by January 1, 2004. Those who have not completed the training by that date cannot execute or manage personal service contracts.

To facilitate meeting the 2004 deadline, the OFM Contract Office is offering ongoing and special contract classes. The class schedule for each quarter is available online at <http://swfs.ofm.wa.gov/swt/schedule.asp#Contracts>. For information regarding an agency-specific class, call (360) 725-5259 or email OFM.Contracting@ofm.wa.gov.

The training OFM offers covers the topics in this *Guide to Personal Service Contracting*. Those who have taken OFM's half-day or full-day personal service contract training since July 1999 have satisfied the requirement. OFM has records of those who attended training subsequent to that date.

Staff who execute contracts are those who sign contracts. Staff who manage contracts are those staff who have responsibility for the day to day activities involved in contracting. These activities may include providing technical assistance to contractors, monitoring, and reviewing and approving invoices. Managers who execute but don't manage contracts may satisfy this requirement by attending the Contracting for Managers training offered by OFM or equivalent training approved in writing by OFM.

Agencies may provide their own personal service contract training and are encouraged to do so. However, the course must be approved in writing in advance by OFM. If agencies provide training, names of staff who attended the training must be reported to OFM.

Any request for an employee to be exempt from this training requirement must be submitted to OFM in writing. OFM must grant approval to the agency prior to the employee executing or managing contracts. The exemption is to be considered a temporary waiver only for an individual. The employee granted the exemption shall attend contract training as soon as feasible. Multiple requests for exemption for an individual will not be approved. State agencies are responsible to ensure that staff attends the training after receiving the waiver.

1.9 Risk-Based Audits

Senate Bill 5629, passed by the 2002 Legislature, requires OFM to conduct risk-based audits of the personal service contracting practices of state agencies to ensure agency compliance with the *Guide to Personal Service Contracting*. OFM selects the agencies and conducts the audits, based on funding provided. The audit results are forwarded to the Governor, the appropriate standing committees of the Legislature, and the Joint Legislative Audit and Review Committee.

1.10 Audit and Investigative Findings

Senate Bill 5629, passed by the 2002 Legislature, requires the State Auditor's Office (SAO) and the Attorney General's Office (AGO) to provide an annual report of agency personal service contract audit and investigative findings, enforcement actions, and the status of agency resolution. The SAO and AGO shall submit the report to the Governor and the Legislative policy and fiscal committees by November 30th of each year.

The audit findings in this report are those issued by the SAO and are not related to the risk-based audits conducted by OFM.

1.11 Frequently Asked Questions and Answers

Answers to frequently asked questions relating to personal service contracting follow:

FREQUENTLY ASKED PERSONAL SERVICE QUESTIONS

QUESTION	RESPONSE
1. How long does it take to conduct a formal competitive procurement, e.g. personal services of \$20,000 or greater?	1. The time can range from six weeks to six months, depending on the complexity. A simple procurement, which does not involve much research or planning on the part of the respondents, may take four weeks, plus two weeks if OFM filing with a ten-working day filing period is required. Most personal service procurements in this dollar range require at least 8 weeks to complete.
2. What type of newspaper must be used to comply with the requirement that	2. Advertising in a major daily newspaper in Washington State meets the minimum requirements of OFM Policy

competitive contracts of \$20,000 or more be advertised?	15.20.10. Washington State newspapers that satisfy this requirement are the Daily Journal of Commerce, the Seattle Times, Seattle P.I., the News Tribune, and the Wall Street Journal. Agencies may also advertise in one or more minority newspapers (see chapter 3, Section 3.3 for a list) and a newspaper in eastern Washington, such as the Spokesman Review (Spokane) or the Yakima Herald.
3. How long after advertising may the procurement document be issued?	3. A reasonable amount of time, generally as designated in the advertisement, must be allowed to enable prospective bidders an opportunity to express interest in receiving the solicitation, generally no less than one week. The solicitation document should be issued to all requesters at the same time, insofar as possible, to allow bidders an equal amount of time to respond to the procurement. Late requests for the solicitation document should be honored, but the late requests should not be reason to delay the due date.
4. How much time should be allowed for the bidders to respond to the procurement?	4. A reasonable amount of time must be allowed for response, depending on the complexity of the information requested in the procurement. Two weeks is generally the minimum for a simple Request for Qualifications/Quotations. An average amount of time for responses is one month after the solicitation document is issued. This allows time to hold a preproposal conference and to issue an addendum of responses to questions.
5. What criteria are used to evaluate Requests for Proposals (RFPs)?	5. Evaluation is generally divided into three parts: technical, management, and cost. The technical section describes the consultant's approach and solution to the project. The management section provides information about the consultant's experience and qualifications. The cost section explains the consultant's pricing structure. Criteria may also include: <ul style="list-style-type: none"> • Understanding of the project • Quality of workplan (technical solutions) • Ability and capacity of the bidder and staff • Experience with similar projects • Project team structure and internal controls • Ability to perform within timeframe and to adhere to schedule • References
6. When competitive procurement is required, may a contract be awarded based on a Request for Information (RFI)?	6. No. The RFI merely seeks information and may not be the basis of a contract award.
7. Does a personal service contract have to be in writing?	7. Yes. A written document specifying the agreement between the agency and the contractor must be prepared for all contracted personal services. Identification of the parties, scope of services, compensation and payment, period of performance,

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	and signatures of responsible parties are examples of required elements. Numerous other elements should also be included in contract documents to provide additional legal protection to the state. See OFM Policy 15.10.45.
8. Are there ways to write a contract to ensure the contractor's legal status as an independent contractor rather than as an employee?	8. Yes. For example, a contractor is not required to work established hours (e.g., 8 to 5); a contractor is independent from control of the agency as to how work is performed but rather is responsible for "results"; the agency does not control the contractor's behavior or financial activities; the contractor may earn a profit or loss; contractor establishes the order and sequence of the work; cannot "quit" without liability; etc.
9. What is the difference between a personal service and purchased service contract?	9. Personal services are professional or technical services provided by a consultant to accomplish a specific study, task or other work statement. Purchased services are provided by a vendor to accomplish routine, continuing and necessary functions. Personal services are performed independently from the day-to-day control of the agency. Purchased services are usually more routine or mechanical in nature. See Section 1.5.1 of this booklet for more information.
10. For purposes of determining whether the \$5,000 filing threshold and the \$20,000 threshold has been reached by individual contractors, agencies must add or aggregate all sole source personal service contracts awarded to a contractor in a fiscal year period. Are competitively procured personal services also aggregated for this determination?	10. No. Only sole source contracts awarded during a fiscal year to a single contractor are aggregated, to determine whether these processing thresholds have been reached. See OFM Policy 15.30.30.
11. When a contract must be filed at least 10 working days prior to the proposed contract start date, how are those days counted?	11. Start counting the day after the filing is submitted to OFM and count 10 business days. (Weekends and state holidays are not included in the count.) The contract may start on the 10th working day after the date of filing, or any date thereafter, subject to OFM review/approval.
12. Institutions of higher education file only state-funded contracts. Are federal funds considered "state funds" for purposes of determining whether or not these rules apply?	12. For the purposes of this statute, "state funds" are defined as funds appropriated by the Washington State Legislature or allotted by the agency, OFM Policy 15.30.10(g). This definition often includes federal funds, and, therefore, federally funded contracts could be subject to filing.
13. Notice of sole source contracts in the amount of \$20,000 or more must be advertised in a statewide or regional newspaper. Are there exceptions to this requirement?	13. Yes. Exceptions to state advertising requirements are possible when: <ul style="list-style-type: none"> • Selection of the contractor is based on a personal accomplishment or characteristic, e.g., guest speaker, performer or artist. • Funding source mandates with whom the agency

	<p>contracts.</p> <ul style="list-style-type: none"> • OFM determines that advertising is inappropriate, based on written agency request. OFM Policy 15.30.30.
14. What is the penalty for late filing?	14. The penalty for late filing, when levied, is \$300 (civil penalty) for the responsible state officer or employee. A consultant who knowingly violates the personal service contract statute chapter 39.29 RCW is subject to the greater of \$300 or 25 percent of the amount of the contract. OFM Policy 15.30.80.
15. When should an agency process a contract amendment rather than a new contract?	15. An amendment may be issued when the nature or scope of the work is relatively unchanged and if the contract allows for the amendment. A new contract should be issued when the essential character of the work has changed, or if there is a substantial change to the scope of work, duration, or cost and/or where there is a logical break in service.
16. Can a contract include more than one type of service? For example, can it contain both personal services and purchased services?	16. Yes. A single contract may have elements of more than one type of service. In this instance, the contract can generally be processed using the procedure for the predominate type of service. (Exceptions are possible.)
17. Are larger contract filings scrutinized more at OFM?	<p>17. Personal service contracts of \$100,000 or more receive review by budget analysts in the OFM Budget Division, and the OFM Senior Assistant Director signs the filings in this dollar range. The budget analysts review whether:</p> <ul style="list-style-type: none"> • There is an allotment for the funds, • The expenditure is consistent with the Agency's budget, • There is a connection with budget assumptions.